

(PLEASE NOTE: THESE GUIDELINES ARE CURRENTLY BEING UPDATED TO REFLECT RECENT CHANGES TO THE AFFORDABLE HOUSING BY-LAW INCLUDED IN SECTION 4.08 OF THE TOWN'S ZONING BY-LAW. THESE GUIDELINES ARE CURRENTLY BEING INCLUDED IN THE WEB SITE FOR GENERAL INFORMATION PURPOSES ONLY. IF YOU ARE LOOKING FOR MORE DETAILED INFORMATION, PLEASE CONTACT FRAN PRICE AT 617-264-6482 OR VIRGINIA BULLOCK AT 617-730-2124.)

**GUIDELINES
FOR
OWNERS OF RENTAL HOUSING
WITH AFFORDABLE UNITS
IN ACCORDANCE WITH SECTION 4.40 OF THE BROOKLINE ZONING BY-LAW**

Approved by the Planning Board on December 16, 1999.

The goal of the Town of Brookline is to increase the supply of decent, permanent, affordable rental housing in the community. The Town offers the developers of certain housing, described in Section 4.40 of the Zoning By-law, the choice of directly providing such housing on-site, off-site, or conveying such housing to a Town designated non-profit organization, in accordance with the following guidelines. These Guidelines provide the minimum requirements for developers who choose to provide affordable rental housing in accordance with Section 4.40. Nothing in these Guidelines, in any Special Permit or other Conditions, unless expressly stated, is intended to give certain rights to any 3rd party beneficiary.

I. OPTION 1: OWNER PROVISION OF AFFORDABLE RENTAL UNITS

A. DEFINITIONS

Unless otherwise expressly provided herein, the following terms shall have the meanings set forth below:

Affordable Housing Agreement means an agreement detailing the affordable housing conditions approved by the Board of Appeals in accordance with Section 4.40 of the Zoning By-law. The Affordable Housing Agreement, which will be based upon these guidelines, tailored to the particular development, and developed by the Town in consultation with the Owner, shall be referenced in the Special Permit. It either shall be attached to the Special Permit or recorded separately at the Registry of Deeds or in the Land Court in the chain of title for the Project. If another property is used to satisfy any of the Owner's requirements in the Affordable Housing Agreement, the Owner must make a marginal reference in the chain of title for that property to both the Special Permit and the Affordable Housing Agreement.

Affordable Rent generally means (1) that rent charged for the unit, as determined according to Section C, so that a hypothetical "typical" household, as defined in Section C, for each Targeted Income Tier is paying no more than 30 percent of income on

housing costs, including rent and Tenant-Paid Utilities (heat, hot water, lighting, and cooking fuel). Also acceptable as Affordable Rent is (2) that rent actually being paid by and on behalf of an Eligible Household under a Tenant-Based Subsidy program.

Area Median Income means the median income, adjusted for household size, for the Boston Standard Metropolitan Statistical Area set forth or calculated from regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 or any successor federal, state or local legislation as it may be amended.

Designated Affordable Units means those units, provided by the Owner in accordance with the Conditions set forth in the Special Permit, which are made available to Eligible Households at Affordable Rents. A Designated Affordable Unit may be either a fixed unit or a “floating” designation (as described in Section B herein) at the discretion of the Board of Appeals. A Designated Affordable Unit which following two consecutive recertifications no longer serves an Eligible Household shall cease to be a Designated Affordable Unit.

Displacement or At Risk of Displacement means any one or all of the following: 1) the household is actually paying in excess of 50 percent of income on contract rent and utilities or has received notice of a rent increase such that it would be paying in excess of 50 percent of income on contract rent and utilities before or within 90 days of projected occupancy of the Designated Affordable Unit; or 2) the household is under notice of non-renewal of its lease before or within 90 days of projected occupancy, or under eviction proceedings not due to actions by a member of or visitor to the applicant’s household; or 3) the applicant has been displaced by a fire not caused by a household member or guest, or by natural disaster; or 4) the Building Commissioner or other agent authorized to enforce the State Building, Fire or Health Code(s) has declared the applicant’s home as unfit for human habitation, and such condition was not in any way caused by actions of a household member or guest.

Eligible Household means one that is certified at the time of move-in with regard to household composition and income as per the standards and procedures set by the U.S. Department of Housing and Urban Development for its Section 8 program, or for a successor program approved by the Town of Brookline, and whose initial income is appropriate for the Targeted Income Tier of the Designated Unit. A household in occupancy shall be considered an Eligible Household until the earlier of the following: (1) its recertified income has exceeded 120 percent of Area Median Income for two consecutive Recertifications or (2) its potential rent, based upon 30 percent of income, equals Market Rent for two consecutive recertifications. An Eligible Household may be an individual of at least 18 years of age or a Family. However, households headed by students or other individuals whose principal sources of support are from family members and/or are listed as dependents by others are not eligible. Heads of household must be U.S. citizens or permanent resident aliens.

Family means two or more persons who will live regularly in the unit and are related by blood, marriage, current registration under the Town’s Domestic Partners By-Law, or

operation of law.. Legal custody is required for households including one or more minor children.

Low Income means a combined household income which does not exceed (i) the amount published by the U.S. Department of Housing and Urban Development as 50 percent of the Area Median Income, adjusted by family size, or (ii) in the absence of such publication, an amount equal to 50 percent of the published Area Median Income, adjusted by family size.

Market Rent means that Rent which already is being charged to the general public for similar units in the Project.

Moderate Income means a combined household income which falls between those amounts (i) published by the U.S. Department of Housing and Urban Development as 50 and 80 percent of the Area Median Income, adjusted by family size, or (ii) in the absence of such publication, between 50 and 80 percent of the published Area Median Income, adjusted by family size.

Owner means all legal and equitable owners of the Project during the Term of the Special Permit and any heir, successor or assign of any person holding an ownership interest in the Project.

Project means the property for which the Special Permit was secured, or any other property which has been approved by the Town as a substitute or addition for the purposes of fulfilling the affordable housing requirements of the Special Permit and in accordance with the provisions of Section 4.40 of the Zoning By-Law.

Recertification of Income means the updating of documentation of household income in accordance with the standards and procedures set by the U.S. Department of Housing and Urban Development for its Section 8 program, or for a successor program approved by the Town.

Targeted Income Tier means any one or all of the following: Low, Moderate and Upper Moderate Income.

Tenant-Paid Utilities means costs to the tenant of paying for heat, hot water, cooking fuel and electricity, as those are estimated and published from time to time by the Brookline Housing Authority or a successor agency approved by the Town.

Tenant-Based Subsidy means any program funded by the federal, state, or local government, such as the Section 8 program funded by the U.S. Department of Housing and Urban Development, by which program resources pay the difference between that which the tenant can afford and a program-specific maximum rent.

The Special Permit with Affordable Housing Conditions ("Conditions") is the Board of Appeals Decision granting the special permit with the set of conditions contained therein or attached thereto and incorporated therein by reference which sufficiently details the affordable housing requirements in accordance with Section 4.40 of the Zoning By-Law and these Guidelines. The Special Permit with the Affordable Housing

Conditions set forth therein or attached thereto and incorporated therein by reference shall be recorded in the chain of title for both the Project property and any off-site property, in the Norfolk County Registry of Deeds or in its Land Registration Office in the case of registered land.

Town means the Town of Brookline, acting through its Board of Appeals and for administrative purposes its designee.

Upper Moderate Income means a combined household income which falls between those amounts (i) published by the U.S. Department of Housing and Urban Development as 80 and 100 percent of the Area Median Income, adjusted by family size, or (ii) in the absence of such publication, between 80 and 100 percent of the published Area Median Income, adjusted by family size.

B. UNIT/HOUSEHOLD “DESIGNATION”

Designated Affordable Units within any development may be “floating” units i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. Prior to the Board of Appeals Decision, the Owner and the Town shall agree to the distribution of low, moderate and upper income affordable unit designations, by bedroom size and unit type in order to include these details in the Special Permit. In general, Designated Affordable Units should be equally desirable, in terms of quality and location, when compared with other standard units in the Project. To the extent possible, Designated Affordable Units should not be concentrated in any one part of the Project.

A unit shall lose its designation as a Designated Affordable Unit when it no longer houses an Eligible Household. This will occur at the earlier of the following:

- (1) upon two consecutive recertifications of income, the household has reached an income level where the rent payment is at or above the Market Rent of the unit; or
- (2) upon two consecutive Recertifications, the Household income is greater than 120 percent of Area Median Income.

Following (1) each Recertification in which the income of an Eligible Household has changed Targeted Income Tier; or (2) each move-out of an Eligible Household; or (3) each Recertification in which a tenant has failed to provide the required information; or (4) a Recertification in which the occupant ceases to be an Eligible Household, as herein defined, the Owner shall re-examine the income profile of occupants of Designated Affordable Units in order to assure that the initial distribution of Designated Affordable Units as outlined in the Affordable Housing Conditions are maintained. The Owner shall use unit turnover to restore the original balance, except that in no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution of Designated Affordable Units. Upon the loss of a Designated Affordable Unit and the availability of an appropriate vacant unit, the Owner shall request in writing approval from the Town for the substitution. If the Town does not respond within 10 working days, the Owner may proceed to designate such substitute unit.

Upon the loss of Designated Affordable Unit status in accordance with paragraphs (3) and (4) above and the tenant has either vacated, been evicted or has been accepted by the Landlord as a market rent tenant, the Owner shall notify the Town of the vacancy, or in the case where the tenant has been accepted as a market rate tenant shall notify the Town of the next appropriate vacant unit for approval as a Designated Affordable Unit, to be offered to a new Eligible Household. If no acceptable alternative unit is vacated within one year of the date of the tenant's failure to qualify, the Owner shall require the over-income tenant to relocate or otherwise vacate the unit. In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the Town's Housing Trust the cash value of the subsidy until such time as another unit is occupied by a new Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the Conditions set forth in the Special Permit.

This is not meant to restrict the right of the Owner to evict any Tenant who fails to recertify, in accordance with Section F, or breaches the lease with the Owner in any other way.

C. SETTING OF AFFORDABLE RENTS

A rental unit is affordable if its initial rent is established at a level where a hypothetical household, with 1.5 persons per bedroom at the median of the income range, would be paying 30 percent of income for rent and utilities. Therefore, the following standards will apply *to the setting and updating of Affordable Rent*, unless an alternative is designated or approved by the Board of Appeals.

1. Assumed occupancy for purpose of establishing Affordable Rent

SRO or Efficiency	1 person
1 bedroom	1.5 persons
2 bedrooms	3 persons
3 bedrooms	4.5 persons
4 bedrooms	6 persons

2. Target Income for purpose of establishing Affordable Rent:

low:	40 % of Area Median Income (80% of published 50 % limit)
moderate:	65 % of Area Median Income (midpoint between published 50% and 80% limits)
high moderate:	90 % of Area Median Income (midpoint between published 80% and 100% limits)

3. Formula for setting Affordable Rent:

.3 x (annual target income/12) - Tenant-Based Utilities

except, the Owner may receive a higher rent from tenants supported by Tenant-Based Subsidies, as approved by the providers of those subsidies.

For the Area Median Incomes, Owners should look at the current Housing and Urban Development (“HUD”) Guidelines or contact the Town’s Department of Planning and Community Development.

D. CHANGES IN INCOME AND RENT OF DESIGNATED HOUSEHOLDS

1. Updating of rents based upon increase in Area Median Income

Rents may be updated on an annual basis, based upon changes in the appropriate published income limits and/or in the Area Median Income.

2. Updating of rents for Eligible Households based upon changes in household income

a. Where an Eligible Household's income, upon Recertification, exceeds the income limit for the original Targeted Income Tier under which the Eligible Household was selected, the Owner may, with 30 days notice, charge 30 percent of the household's income, minus Tenant-Paid Utilities, but in no case greater than the Market Rent. Should a household's income decrease, that household shall be permitted a reduction in rent in accordance with the appropriate formula, but in no case shall pay less than the approved Affordable Rent for the Designated Affordable Unit as that unit is currently Designated.

b. Where an Eligible Household's income, upon two consecutive Recertifications, exceeds 120 percent of Area Median Income and therefore the household is no longer considered an Eligible Household, the Owner may, with 90 days notice, charge Market Rent. The tenant's right to continued occupancy in the particular unit for at least one year following the date of Recertification is discussed in Section B.

c. Where, upon Recertification, an Eligible Household's income declines, and there is an *available* Designated Affordable Unit intended to serve the lower Targeted Income Tier, the unit currently occupied by the Eligible Household may, at the Owner's discretion and upon the approval of the Town, be re-designated according to the lower Targeted Income Tier, in which case the Eligible Household shall pay 30 percent of income minus Tenant-Paid Utilities, but in no case less than the approved Affordable Rent for the Unit. A unit may be “available” either because a previously Designated Unit is vacant or its occupant no longer qualifies for the lower Targeted Income Tier.

After any adjustment in accordance with the above, the next appropriate unit should be rented to an appropriate income qualified resident, so as to restore and maintain the unit size and income mix originally intended.

E. RENT UP OF DESIGNATED AFFORDABLE UNITS

1. Household Size in Relation to Number of Bedrooms

Household size shall be appropriate for the assigned Designated Affordable Unit. In determining appropriateness, the head of household and partner are assumed to share a bedroom, as are two children of the same sex whose ages are not excessively disparate, unless there are documented health reasons for individual bedrooms.

2. Order of Priority for Eligible Households

Priority for Designated Affordable Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

- current residents of the Town who are At Risk of Displacement and previous residents of the Town who were Displaced from Brookline within the 12 months prior to the projected occupancy of the Designated Affordable Unit.
- current residents of the Town;
- persons employed by the Town of Brookline or the Brookline Housing Authority;
- all others.

The applicant for housing will be responsible for documenting their priority status under any of the above noted categories.

Notwithstanding the above, the Owner may accept an eligible Brookline resident with a rent subsidy who is not at risk of displacement, if there are no such subsidy holders with higher priority.

3. Maintenance of a Waiting List

The Owner shall maintain a waiting list of Eligible Households by priority status who have filed an application or a letter and who meet the qualifications defined herein. Such application should include at least the following, in order to classify the applicant: the ages and relationships of household members, gross household income, and information related to priority status. It is understood that it is the responsibility of the applicant to update information, which will affect either income or priority status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available.

4. Initial Outreach for Eligible Households

At least 90 days prior to initial rent-up, the Owner shall provide written notice to the Town of 1) the expected occupancy date of the Designated Affordable Units, 2) whether the Owner has a waiting list of qualified Eligible Households priority category and availability of a Rent-Based Subsidy. Upon receipt of such notice, the Town will have up to 30 days to notify or refer additional potentially Eligible Households to the Owner.

The Owner shall consider all such households prior to offering a unit for lease in accordance with Section E.2., above.

5. Subsequent Rent-Up of Vacated Designated Units

The Owner shall give written notice to the Town as soon as it is aware of the actual or future availability of a Designated Affordable Unit, as well as a breakdown, by priority category and availability of a Rent-Based Subsidy, of acceptable Eligible Households which it may have on its waiting list. The Town will have up to 15 working days to refer additional potentially Eligible Households. The Owner will consider such households prior to offering the unit for lease in accordance with the priorities set forth in Section E.2., above.

F. OCCUPANCY REQUIREMENTS

Tenant leases shall include the method for updating of rents set forth in these Guidelines and, as a condition to continued eligibility, obligate the household to report all information required by these Guidelines, including providing copies of applications, Recertifications and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring Market Rents and initiating eviction proceedings against renters of Designated Affordable Units who do not report as required. Tenant leases shall also include the requirement of over-income tenants to relocate under specific circumstances, as indicated in Section B. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

The Owner shall recertify the income of households occupying Designated Affordable Units on an annual basis on the anniversary date of the lease, except where the household is a recipient of a Tenant-Based Subsidy, in which case the Owner shall require and keep on file a copy of the Recertification from the issuing authority.

G. MONITORING

1. Administration/ Record-Keeping

The Eligible Household's application form, annual recertification forms, and third party verifications must be maintained by the Owner throughout the Eligible Household's Occupancy and for a period of at least seven (7) years thereafter. These records must be available to the Town if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time as deemed reasonable by the Board of Appeals.

2. Annual Report

The Owner will file an annual report to the Town within 60 days of the end of each calendar year according to a format provided by the Town. The current report format is included as Section III.

H. ENFORCEMENT

The Owner will be required to record the Special Permit and Conditions contained therein in accordance with G.L. c.40A, s. 11 and shall file a copy of the recorded Special Permit which copy shows the usual recording date, with the Town Clerk. In addition, the Owner will be required to sign and record an Affordable Housing Agreement. In the case of off-site housing, the Owner shall record the Special Permit in the chain of title for both properties, and the Affordable Housing Agreement in the chain of title for that property which contains the Designated Affordable Units. No building permit shall issue and the Special Permit shall not take effect until complete certified copies of the Special Permit with any attachment thereto and the Affordable Housing Agreement, with the recording date(s) noted thereon, are filed with the Town Clerk and the Building Commissioner.

Without limitation on any other rights of the Town, in the event there is a violation of any conditions contained within the Special Permit and Affordable Housing Agreement, the Town may take any one or a combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the Special Permit:

1. Revocation of the Special Permit;
2. Modification of the Special Permit;
3. Injunctive relief to enforce the terms of the Special Permit;
4. Payment of money damages to the Town in an amount equal to the difference in the required rent and the rent being charged for the period of non-compliance; and
5. A cash payment, as provided for in subsection (d)(4) in Section 4.40 of the Zoning By-Law, pro-rated to the number of required affordable units shall be made to the Town if the Owner is unable to provide affordable units for occupancy as described herein.

The Owner may request a certificate from the Town stating that the Owner is in compliance with the terms and Conditions of the Special Permit and/or Affordable Housing Agreement, or stating the noncompliance and the actions necessary to come into compliance. The Town will execute and deliver such certificate within ten (10) business days of receipt of a written request for such Certificate. Certificates of Compliance shall not be required for the leasing of any Designated Affordable Unit.

I. NON-ELIGIBILITY/DISQUALIFICATION

No employee agent, stockholder, officer, director or servant or family member of the Owner or its Management Company, or its employees, agents or servants thereof, related either by blood, marriage or operation of law may qualify for an Affordable Unit or receive any benefit related in any way to the administration or compliance with the Special Permit, and the Affordable Housing Conditions contained therein.

II. OPTION 2: CONVEYANCE OF UNITS TO A NON-PROFIT OWNER

As an alternative to direct provision of affordable rental units within the proposed project, the Owner may choose (1) to construct a separate building within the site or, alternately, if the Board of Appeals accepts an off-site solution, (2) to construct a new building on a different site, or (3) to renovate to "as good as new" standards an existing residential building, in all cases for conveyance to a Town designated non-profit corporation to own and operate as permanently affordable housing.

The sales price for conveyed buildings would depend upon (1) the gross rent available to the non-profit purchaser, applying formulas included in Section I for affordable units, and reasonably projected market rents for remaining units in the building, if any; (2) the purchaser's projected operating budget; and (3) current financing options, including lender standards for vacancy and debt service coverage. The Owner may wish to work with the non-profit purchaser to achieve the most advantageous financial terms.